UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 24 1997

REPLY TO THE ATTENTION OF:

WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David Hoff
President, Chemetco, Inc.
P.O. Box 67
Hartford, Illinois 62048

Dear Mr. Hoff:

The enclosed Order is issued to Chemetco, Inc., pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The Order finds Chemetco, Inc. to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and outlines corrective actions that you must undertake to come into compliance. Compliance with the terms of this Order is required within the time period specified in the Order. Failure to comply with the Order may subject you to further enforcement action.

If you have any questions concerning this matter, please contact Mr. David W. Schulenberg, Senior Enforcement Officer at (312) 886-6680.

Please send your written response to the address shown in the Order.

Sincerely yours,

Jo Lynn Traub
Director, Water Division

Enclosure

cc: Brazier, ACOE
Yurdin, IEPA
Collins, USFWS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
CHEMETCO, INC., HARTFORD, ILLINOIS,	)	DOCKET NO. V-WW-AO-97-14
	)	
Respondent.	)	
	)	
PROCEEDINGS UNDER SECTION 309(a) OF THE CLEAN WATER ACT, 33 U.S.C. § 1319(a).	)	FINDINGS OF VIOLATION AND COMPLIANCE ORDER

The following FINDINGS are made and ORDER issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of Region 5, U.S. EPA, who has duly redelegated this authority to the undersigned Director, Water Division, Region 5, U.S. EPA, who hereby issues this Findings of Violation and Compliance Order.

FINDINGS

1. The Respondent in this Order is Chemetco, Inc., P.O. Box 67, Hartford, Illinois, 62048.

2. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of pollutants from a point source into navigable waters.

3. A "discharge of pollutants" is defined as "any addition of any pollutant to navigable waters from any point source . . .". 33 U.S.C. § 1362(12).

4. A "pollutant" is defined as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste, discharged into water." 33 U.S.C. § 1362(6).

5. A "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

6. "Navigable waters" is defined as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(8).

7. "Waters of the United States" is defined as "wetlands adjacent to waters which are tributaries of interstate waters." 40 C.F.R. § 122.2.

8. "Wetlands" is defined as "those areas that are inundated or saturated by surface or groundwater at a frequency

and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 232.2(f).

9. The Respondent added rock, sand, waste concrete, and industrial waste from dump trucks, bulldozers, and excavators into approximately eight (8) acres of wetlands on its property located in Section 16, Township 4 North, Range 9 West, City of Hartford, County of Madison, State of Illinois. (Exhibits No. 1 & 2).

10. The Respondent did not have a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

11. The Respondent is a corporation. Therefore, the Respondent is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. The Respondent added pollutants from point sources to navigable waters. Therefore, the Respondent "discharged" pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

13. The Respondent discharged rock, sand, waste concrete, and industrial waste . Therefore, the Respondent discharged "pollutants" pursuant to Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

14. The Respondent discharged pollutants from dump trucks, bulldozers, and excavators which are rolling stock. Therefore, the Respondent discharged pollutants from a "point source" pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

15. The Respondent discharged pollutants from a point source into areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Therefore, the areas are "wetlands" pursuant to 40 C.F.R. § 232.2. The wetlands are adjacent to Long Lake. Long Lake is a tributary to the Mississippi River. The Mississippi River is an interstate river. Therefore, the wetlands are "waters of the United States" pursuant to 40 C.F.R. § 232.2. Therefore, the Respondent discharged pollutants from a point source into "navigable waters" pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

16. Consequently, the Respondent discharged pollutants from a point source into navigable waters in violation of Section 301 of the CWA, 33 U.S.C. § 1344.

17. Each discharge by Respondent of pollutants from point sources into navigable waters constitutes a single and separate violation of Section 301 of the CWA, 33 U.S.C. § 1311.

ORDER

BASED UPON THE FOREGOING FINDINGS, and pursuant to the authority vested in the Administrator, U.S. EPA, pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 309(a)(3), and delegated to the Regional Administrator, Region 5, U.S. EPA, and duly redelegated to the undersigned, IT IS HEREBY ORDERED:

1. The Respondent shall immediately cease further discharge of pollutants from a point sources into navigable waters (the wetlands) on its property as required by Section 301 of the CWA, 33 U.S.C. 1311.

2. The Respondent shall submit to U.S. EPA within fifteen (15) days of your receipt of this Findings and Order a written certification of its intent to comply with this Order.

3. The Respondent shall submit to U.S. EPA within thirty (30) days of your receipt of this Findings and Order a written plan to restore the wetlands to its original condition and contours consistent with the general guidelines reflected in Exhibit 3. The Respondent's plan must include a date certain by which the wetlands restoration will be complete.

4. The Respondent shall execute its wetlands restoration plan within thirty (30) days of U.S. EPA's approval of its wetlands restoration plan.

5. The Respondent shall submit to U.S. EPA by the date specified in the U.S. EPA approved Wetland Restoration Plan written certification that it has restored the wetlands to its original contours and condition pursuant to the U.S. EPA approved Wetlands Restoration Plan. The certification shall include photographs or videotape and "as built" drawings including topographic information documenting the U.S. EPA approved Wetlands Restoration Plan.

6. The Respondent shall certify all submittals by authorized signature and issue to:

David W. Schulenberg
Senior Enforcement Officer
Watershed and Non-Point Source Programs Branch
Water Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (WW-16J)
Chicago, Illinois 60604-3590; and

Michael A. Brazier, Chief
Regulatory Branch
St. Louis District
U.S. Army Corps of Engineers
1222 Spruce Street
St. Louis, MO

7. U.S. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action.

8. Neither the issuance of this Order nor compliance with its terms affects the Respondent's ongoing obligation to comply with the CWA or any other federal, state, or local law, regulation, or ordinance, nor does it preclude further enforcement action pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319, for the alleged violations cited herein.

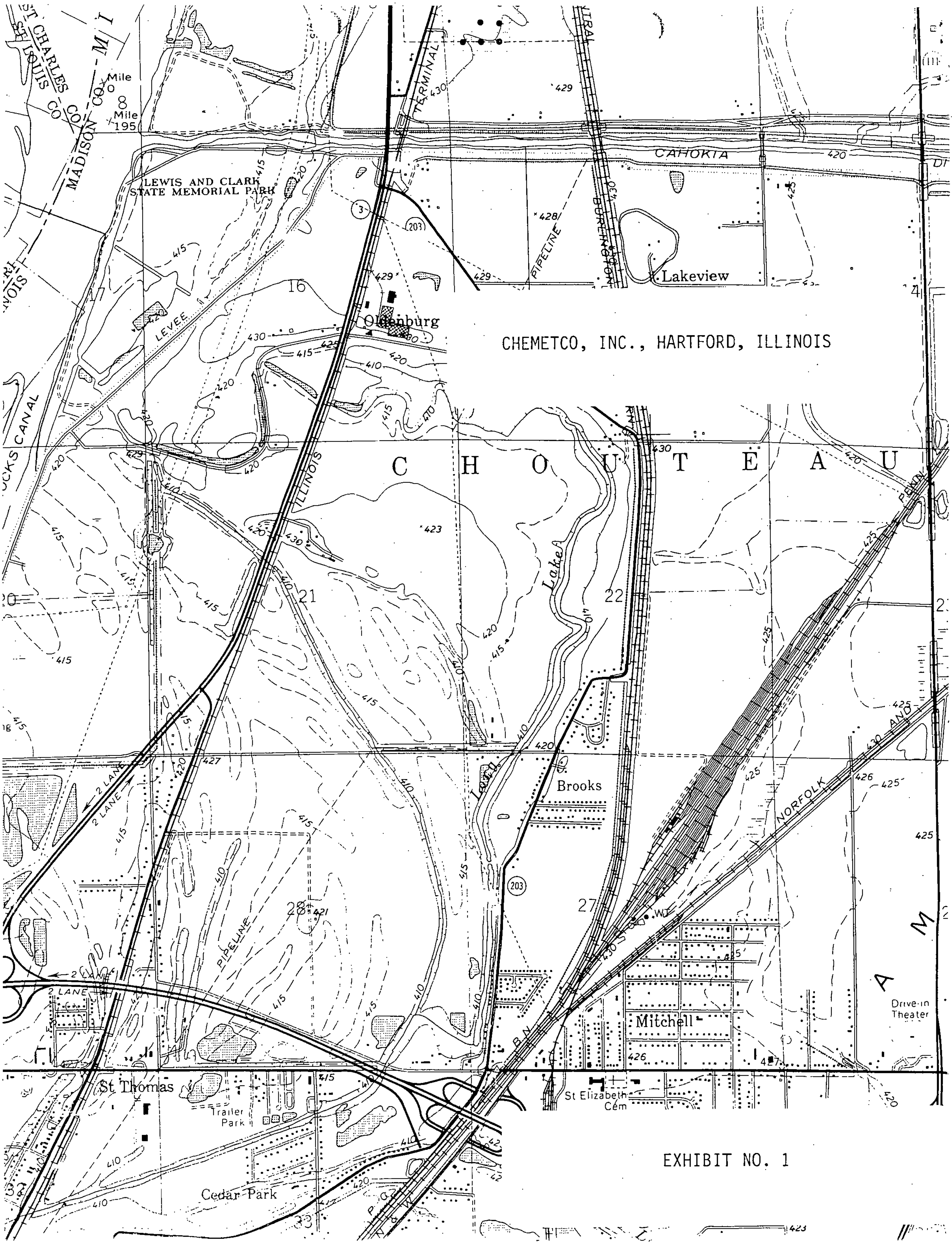
9. Neither the issuance of this Order by the U.S. EPA nor compliance with this Order by the Respondent shall be deemed to relieve the Respondent of liability for any civil penalty, remedy, or sanction authorized to be imposed pursuant to Section 309(b), (c), or (g) of the CWA, 33 U.S.C. § 1319(b),(c) or (g), for any violation of applicable requirements of the CWA. U.S. EPA specifically reserves the right to seek any or all remedies authorized under these provisions for each and every alleged violation cited herein.

10. The Respondent's violation of any of the terms of this Order may result in the U.S. EPA taking further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319. The CWA includes provisions for injunctive relief, civil penalties, and criminal penalties for violations of the CWA.

Specifically, U.S. EPA may assess civil administrative penalties of $10,000.00 per violation, up to a maximum of $125,000.00 pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or seek civil injunctive relief and judicial penalties of $25,000.00 per violation pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Furthermore, U.S. EPA may seek criminal sanctions including fines and imprisonment for negligent or knowing violations of the CWA pursuant to Section 309© of the CWA, 33 U.S.C. § 1319(c).

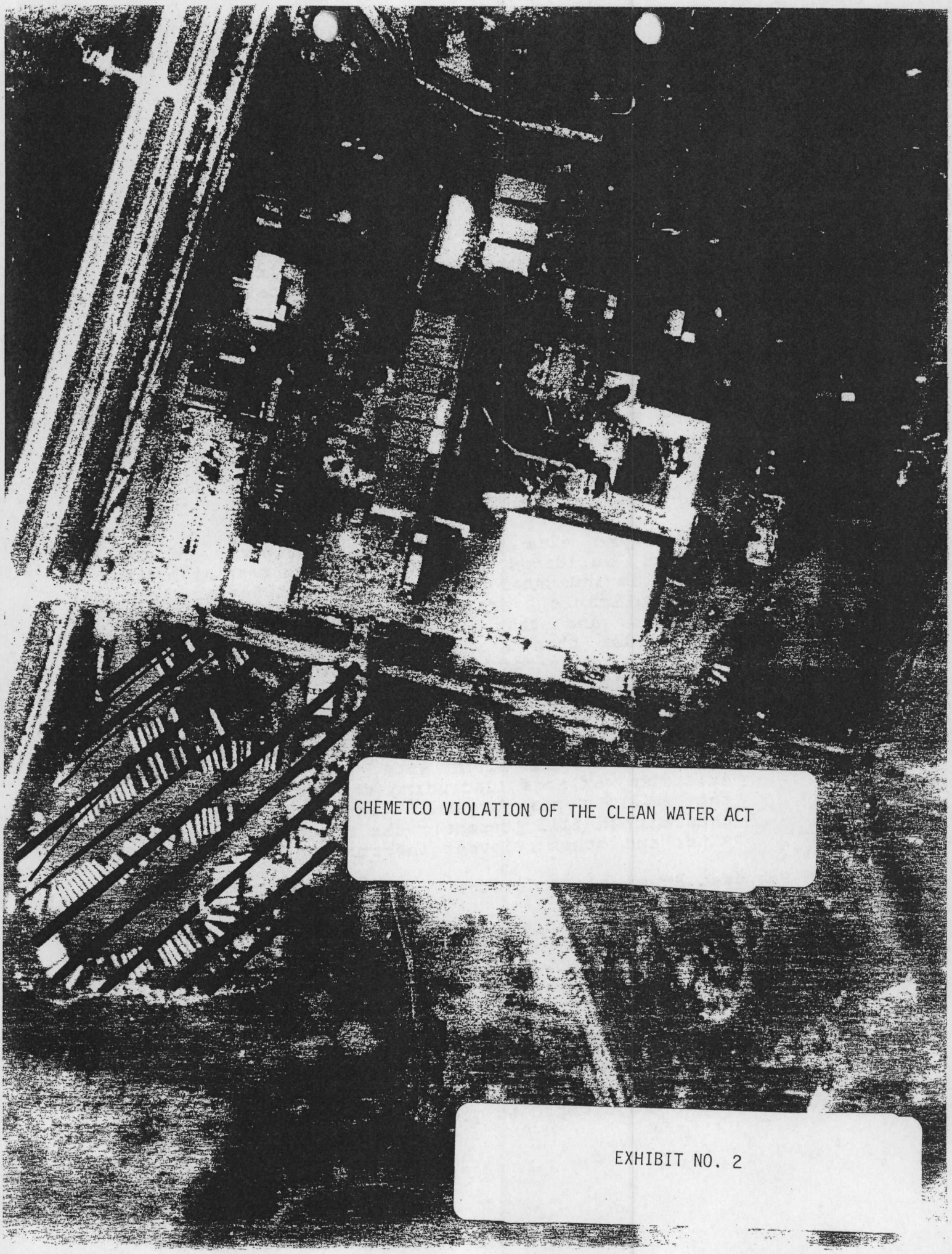
Dated: Sept. 22, 1997

Jo Lynn Traub
Director, Water Division
Region 5
U.S. Environmental Protection Agency



CHEMETCO, INC., HARTFORD, ILLINOIS

EXHIBIT NO. 1


CHEMETCO VIOLATION OF THE CLEAN WATER ACT
EXHIBIT NO. 2

SECTION 404 ENFORCEMENT:

GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS

The following guidelines serve as general specifications for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary at every site, precise specifications will depend upon the environmental conditions peculiar to the site in question. The size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced will further define the scope and complexity of the restoration plan. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan.

I. Exisiting Physical Conditions

A. A surveyed site plan depicting property boundaries, streets, buildings, waterbodies (with mean high water or high tide indicated), wetlands, FEMA 100-year floodplain (if applicable), areas of unpermitted fill, elevation contours, and other ground surface features at a scale no greater than 1 inch = 40 feet. This plan shall include a cross-section view of the site which shows soil depths, fill depths, and average depth to groundwater across the site.

B. A narrative description of existing physical conditions, including the area of the site; area of unpermitted fill; existing wetlands (including the types of vegetation); the soil types present (including the types of unpermitted fill present); the hydrologic regime of the site; and other relevant information.

II. Proposed Physical Conditions

A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill. replacing dredged material into ditches, etc.). Indicate proposed finished grades, expected mean high water or high tide elevations, the location of proposed plantings/seedings, and the location of all sediment and erosion control structures (e.g., hay bales, silt screens, etc.). This plan shall include a cross-section view of the site which shows proposed soil depths and average depth to groundwater across the site.

EXHIBIT NO. 3

B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; how the equipment will gain access to the site to perform the work; the location of the ultimate disposal site for any removed fill; how the work will progress across the site; a listing of the plant species to be seeded/planted at the site; the sources of the plant material (note: as a rule, transplanting of plant stock will not be permitted); the planting method(s) and scheme (i.e., physical layout of how plant material will be installed); any methods to be used to minimize adverse impacts while remedial work is underway; the expected hydrologic regime of the site in its restored condition; and other relevant information.

C. Delineate the area(s) on the site to be restored by installation of flagging, sedimentation and erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that no work shall occur beyond these boundaries.

III. Actual Restored Physical Conditions

A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site at the completion of grading activities (i.e., an "as-built" plan), including actual finished grades and all pertinent ground surface features. This plan shall include a cross-section view of the site which shows actual soil depths and average depth to groundwater across the site. This as-built plan shall be prepared and submitted prior to planting/seeding activities.

IV. Monitoring/Measures of Success

A. Normally, monitoring shall be performed midway through and near the end of the first and second growing seasons, then annually near the end of each successive growing season for the duration of the required monitoring period. Monitoring shall be performed for a period of three to five years, depending upon the scope and complexity of the remedial efforts required.

B. A monitoring plan shall incorporate a simple statistical approach to assessing relative success or failure of restoration efforts (e.g., transects with sampling stations for measuring parameters such as percent areal cover in each vegetative stratum). A permanent photographic record shall be included as part of the monitoring plan.

C. Depending upon the scope and complexity of the remedial efforts, general criteria to measure success shall be determined by EPA. These criteria shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. A general provision shall be included to allow for corrective action to be taken, at the direction of EPA, should monitoring show that criteria for success are not being met.

D. A report shall be prepared and submitted after each monitoring event which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include photographic evidence as well. This report shall identify any problems discovered and recommend appropriate corrective action to ensure the success of restoration.

V. Inspections

A. The plan shall provide for inspections by EPA personnel after installation of all sedimentation and erosion control structures, after completion of grading activities, after completion of initial planting/seeding activities, and after monitoring indicates that the criteria for success have been attained.

VI. Schedule

A. A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.